

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1478 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge?No

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SHANTABEN NAGJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

Mr. Mukund Nagarkar, advocate for Petitioner.

Mr. S.R. Divetia, A.P.P. for Respondents.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.R.JAIN

Date of decision: 28/10/96

ORAL JUDGEMENT (Per Abichandani, J.,)

A telegram was sent by one Shantaben Nagjibhai, which is on record of this petition, in which she had informed the Honourable the Chief Justice of this High Court that on

the day of the telegram, i.e., 10.10.1996, her brother, Govabhai Nagjibhai Rabari, was severely beaten in the custody of the Vatva GIDC police station, by the Deputy Commissioner of Police, Shri Ishwarbhai Desai, and that the police was bent upon to kill her brother. It was stated that the Deputy Commissioner of Police Shri Ishwarbhai Desai had personal enmity with her brother. The Honourable the Chief Justice was, therefore, requested to take immediate action against the DCP and arrange to send the applicant's brother to hospital.

This telegram was placed before this Bench treating it as a Special Criminal Application. Directions were given by us on 16.10.1996 while admitting the petition, having regard to the urgency in the matter, that the concerned DCP, who is respondent No.2, should attend the court on that day itself at 2.45 P.M. with all the relevant case papers and his police diary. The accused Govabhai was also required to be produced before the court at 2.45 P.M.

The learned A.P.P. submitted that the accused Govabhai was admitted to the jail hospital on 11.10.1996 as an indoor patient and was treated for certain injuries. The respondent No.2, DCP, remained present and it was stated on his behalf that the said DCP had not even seen the accused and there was no question of his manhandling him during the night between 9.10.1996 and 10.10.1996 when the accused was in the lockup at Gaekwad Haveli and incharge of the investigating officer, Vatva GIDC Police Station, Mr. Chavda. We had directed the concerned doctor of the jail hospital to file an affidavit indicating the particulars of the nature of injuries which were noticed by him and their age and the treatment given to the accused Govabhai. We had also directed the Civil Surgeon to examine the accused and send his report.

The learned A.P.P. submits that the Dr. K.S. Desai who had examined the accused on 11.10.1996 and has filed the affidavit is present in court. We asked the doctor as to why the accused was admitted as an indoor patient in jail hospital on 11.10.1996 and the doctor states before us that the accused Govabhai was admitted in the jail hospital not for treating the minor injuries but for his old disease (Epigastric Hernia). In his affidavit he has stated that injuries were found on the person of Govabhai as stated in his certificate at Annexure A to the affidavit and the age of those injuries was 2 to 3 days and all these injuries were of minor nature. It is stated that the said accused person was referred to the Civil Hospital, Ahmedabad on 15.10.1996 for his

Epigastric Hernia (old disease). He remained in jail hospital from 11.10.1996 to 14.10.1996 and was also treated for injuries mentioned in the certificate. In the medical report at Annexure A to the affidavit it is recorded that the said person had complained on 11.10.1996 in the jail hospital that he was beaten by pipe by the police during the period when he remained in police custody on 9.10.1996. Necessary treatment for these injuries was given as stated in the medical report of the said doctor. Xerox copy of the case papers of the jail hospital prepared on 11.10.1996 also refer to Epigastric Hernia. In the history it is mentioned that the accused was assaulted on 9.10.1996 at 10 P.M. by 'lathi' and then the word 'lathi' is scored off and 'pipe' is written.

Certified copy of the production report which is placed on record shows that the said accused was produced before the Metropolitan Magistrate's court No.19, Ahmedabad at 12.15 noon on 10.10.1996 and at that time he had not complained of any ill-treatment by the police during the period of his police custody. He was forwarded to the Central Jail in judicial custody on 10.10.1996.

It appears that in the Civil Hospital where the said accused was sent for treatment of old disease he came to be admitted in the psychiatry ward. No one could explain as to why he landed in the psychiatry ward. However, we are shown his discharge card which shows that the accused was discharged on 24.10.1996 and it has been mentioned therein that there was no major psychiatric illness detected in him. It is stated by the learned A.P.P. on instruction from the concerned doctors that after being discharged from the civil hospital on 24.10.1996 the said accused has remained in jail and today he had complained of some tooth problem and, therefore, he was referred to the dental hospital.

The learned A.P.P. has placed on record a table showing the involvement of accused Govabhai in about 30 offences of which it is stated that two are offences of murder. We are not concerned with that aspect of the matter at this stage.

The facts clearly disclose that the DCP, Mr. Ishwarbhai Maganbhai Desai, was not at all concerned in any beating of the said accused Govabhai. The said accused had not complained of any beating before the learned Metropolitan Magistrate when he was produced before him on 10.10.1996. The DCP, Mr. Ishwarbhai Desai, has filed an affidavit categorically stating that he has not even seen the face

of the accused Govabhai till today. He has stated that the investigation was carried on by Police Sub Inspector Mr. Chavda and the accused Govabhai was never placed in the custody of the DCP, Mr. Ishwarbhai Desai, at any point of time. It is also stated on oath that the DCP, Shri Ishwarbhai Desai, had never visited Vatva GIDC Police Station during the course of investigation of the case against the said accused Govabhai. It is stated that the allegations made in the telegram addressed to the Honourable the Chief Justice are totally false, baseless and incorrect.

We are satisfied from the record that the allegations levelled against the respondent No.2, DCP Shri Ishwarbhai Desai, are totally false and have been made by the sister of the accused Govabhai without any basis. This application is, therefore, required to be rejected. Rule is discharged.